REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-19 are pending in the present application with claims 1, 3-5, 7, 10, 13 and 16-18 having been amended by the present Amendment.

In the outstanding Office Action, claims 1, 2, 7-12 and 15 were rejected under 35 U.S.C. § 102(b) as anticipated by Dulaney et al.; claim 16 was rejected under U.S.C. § 103(a) as unpatentable over Dulaney et al.; claims 3, 4, 18 and 19 were rejected under U.S.C. § 103(a) over Dulaney et al. in view of Labonte et al.; and claims 5, 6, 13, 14 and 17 were indicated as allowable if rewritten in independent form.

Applicant thanks the Examiner for the indication of allowable subject matter. In light of this indication, dependent claims 5, 13 and 17 have been rewritten in independent form.

Claims 1, 2, 7-12 and 15 stand rejected under U.S.C. § 102(b) as anticipated by Dulaney et al. This rejection is respectfully traversed.

Amended independent claim 1 is directed to a bit error rate (BER) testing apparatus including a computer that commands a BER test through a BER test command, receives a BER value according to the BER test command, and displays the BER value; a roadside equipment that transmits a BER test message according to the BER test command; and an on-board equipment that compares the BER test message received from the roadside

equipment with a previously stored BER test message to compute the BER value and transmits the BER value to the computer via the roadside equipment.. The previously stored BER test message is stored before the computer commands the BER test. The apparatus also includes at least one switch that switches an operation mode of the roadside equipment and the on-board equipment between an operating mode and a BER testing mode such that the BER testing mode operates independently from the operating mode. Independent claim 7 includes similar features in a varying scope.

In a non-limiting example, Figure 3 illustrates a BER testing apparatus including a computer 300 that commands a BER test command (see Figure 5, for example), receives a BER value according to the BER test command, and displays the BER value. Also illustrated is a roadside equipment 200 that transmits a BER test message according to the BER test command, and an on-board equipment 100 that compares the BER test message received from the roadside equipment 200 with a previously stored BER test message to compute the BER value and transmits the BER value to the computer 300 via the roadside equipment 200.

The previously stored BER test message is stored in the on-board equipment 100 before the computer 300 commands the BER test. This feature is supported in the specification at least at pages 12 and 13, paragraph [41]. Thus, the roadside equipment 200 and the on-board equipment 200 know the actual data of the BER test message

communicated between them. The BER testing apparatus also includes at least one switch that switches an operation mode of the roadside equipment and the on-board equipment between an operating mode and a BER testing mode such that the BER testing mode operates independently from the operating mode. See Figure 3, for example.

On the contrary, Dulaney et al. does not previously store test messages before start of a BER test and does not operate a BER testing mode independently from an operating mode. Rather, Dulaney et al. is directed to providing an in-service error monitoring apparatus which performs bit error rate computation in a manner which does not interfere with the transmit/receive communication systems (see column 1, lines 67 to column 2, line 4). In more detail, in Dulaney et al., the actual data from the data source 101 (see Figure 1) being transmitted to the data sink 105, for example, is scanned at point 112 by a scanner 114 to retrieve a subset of bits (or the entire data) and then this value is compared in a comparator 130 with a corresponding set of bits scanned from a point 103 by a scanner 115 in the receiving side. The data received at the point 103 in Dulaney is not previously stored prior to the start of the BER test. In addition, note that in Dulaney et al., the data scanned from the point 103 is then retransmitted back to the original transmitting side via a low speed command link 120 or telemetry data link 109 to be compared in the comparator 130 with the originally transmitted bits. Thus, in Dulaney et al., it is possible the scanned data bits being transmitted from the point 103 back to the comparator 130 may include additional bit error

rates such that the data stored in the data set 110 (corresponding to bits scanned at the point 103) is not the exact same data scanned from the point 103.

In addition, as noted above, the real-time data being transmitted from the data source 101 is scanned to retrieve bits to compare it with bits received at the point 103. That is, the BER test in Dulaney is not operated independently from a regular operational mode. That is, Dulaney does not teach or suggest a switch that switches an operation mode between an operating mode and a BER testing mode such that the BER testing mode operates independently of the operation operational mode. On the contrary, Dulaney et al. does real-time BER processing during a normal operating mode.

Accordingly, it is respectfully submitted independent claims 1 and 7 and the claims depending therefrom are allowable.

Claim 16 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Dulaney et al. This rejection is respectfully traversed.

Amended independent claim 16 includes similar amendments in a varying scope as independent claims 1 and 7. Accordingly, it is respectfully requested this rejection also be withdrawn.

Claims 3, 4, 18 and 19 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dulaney et al. in view of Labonte et al. This rejection is respectfully traversed.

Similar arguments apply to independent claim 18 as discussed above. Further, it is respectfully submitted Labonte also does not teach or suggest the claimed switch nor previously storing the BER test message. Accordingly, it is respectfully requested this rejection also be withdrawn.

In addition, the specification has been amended to correct minor informalities. It is believed no new matter has been added.

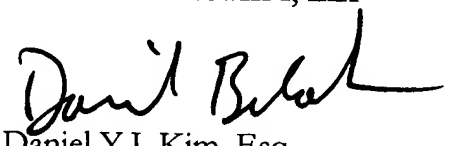
CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney, **David A. Bilodeau**, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this,

concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,
FLESHNER & KIM, LLP



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